

ELECTRONIC NOTARIZATION AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Calvin R. Musselman

Senate Sponsor: Daniel McCay

LONG TITLE

Committee Note:

The Government Operations Interim Committee recommended this bill.

Legislative Vote: 12 voting for 0 voting against 4 absent

General Description:

This bill modifies provisions related to electronic notarizations.

Highlighted Provisions:

This bill:

- ▶ provides for the electronic notarization of documents allowed to be recorded electronically in a county recorder's office;
- ▶ modifies definitions applicable to those electronic notarizations; and
- ▶ modifies a provision authorizing the Office of the Lieutenant Governor to adopt rules to address electronic notarizations.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

46-1-2, as last amended by Laws of Utah 2022, Chapter 158

46-1-3.6, as enacted by Laws of Utah 2019, Chapter 192



28 [46-1-3.7](#), as enacted by Laws of Utah 2019, Chapter 192
 29 [46-1-14](#), as last amended by Laws of Utah 2019, Chapter 192
 30 [46-1-17](#), as last amended by Laws of Utah 2019, Chapter 192



31
 32 *Be it enacted by the Legislature of the state of Utah:*

33 Section 1. Section [46-1-2](#) is amended to read:

34 **[46-1-2. Definitions.](#)**

35 As used in this chapter:

36 (1) "Acknowledgment" means a notarial act in which a notary certifies that a signer,
 37 whose identity is personally known to the notary or proven on the basis of satisfactory
 38 evidence, has admitted, in the presence of the notary, to voluntarily signing a document for the
 39 document's stated purpose.

40 (2) "Before me" means that an individual appears in the presence of the notary.

41 (3) "Commission" means:

42 (a) to empower to perform notarial acts; or

43 (b) the written document that gives authority to perform notarial acts, including the
 44 Certificate of Authority of Notary Public that the lieutenant governor issues to a notary.

45 (4) "Copy certification" means a notarial act in which a notary certifies that a
 46 photocopy is an accurate copy of a document that is neither a public record nor publicly
 47 recorded.

48 (5) "Electronic notarization" means:

49 (a) a remote notarization; or

50 (b) a notarization:

51 (i) in an electronic format;

52 (ii) of a document that may be recorded electronically under Subsection [17-21-18.5\(5\)](#);

53 and

54 (iii) that conforms with rules made under Section [46-1-3.7](#).

55 [~~(5)~~] (6) "Electronic recording" means the audio and video recording, described in
 56 Subsection [46-1-3.6\(3\)](#), of a remote notarization.

57 [~~(6)~~] (7) "Electronic seal" means an electronic version of the seal described in Section
 58 [46-1-16](#), that conforms with rules made under Subsection [46-1-3.7\(1\)\(d\)](#), that a [~~remote~~] notary

59 may attach to a notarial certificate to complete [~~a remote~~] an electronic notarization.

60 [~~(7)~~] (8) "Electronic signature" means the same as that term is defined in Section
61 46-4-102.

62 [~~(8)~~] (9) "In the presence of the notary" means that an individual:

63 (a) is physically present with the notary in close enough proximity to see and hear the
64 notary; or

65 (b) communicates with a remote notary by means of an electronic device or process
66 that:

67 (i) allows the individual and remote notary to communicate with one another
68 simultaneously by sight and sound; and

69 (ii) complies with rules made under Section 46-1-3.7.

70 [~~(9)~~] (10) "Jurat" means a notarial act in which a notary certifies:

71 (a) the identity of a signer who:

72 (i) is personally known to the notary; or

73 (ii) provides the notary satisfactory evidence of the signer's identity;

74 (b) that the signer affirms or swears an oath attesting to the truthfulness of a document;
75 and

76 (c) that the signer voluntarily signs the document in the presence of the notary.

77 [~~(10)~~] (11) "Notarial act" or "notarization" means an act that a notary is authorized to
78 perform under Section 46-1-6.

79 [~~(11)~~] (12) "Notarial certificate" means the affidavit described in Section 46-1-6.5 that
80 is:

81 (a) a part of or attached to a notarized document; and

82 (b) completed by the notary and bears the notary's signature and official seal.

83 [~~(12)~~] (13) (a) "Notary" means an individual commissioned to perform notarial acts
84 under this chapter.

85 (b) "Notary" includes a remote notary.

86 [~~(13)~~] (14) "Oath" or "affirmation" means a notarial act in which a notary certifies that
87 a person made a vow or affirmation in the presence of the notary on penalty of perjury.

88 [~~(14)~~] (15) "Official misconduct" means a notary's performance of any act prohibited or
89 failure to perform any act mandated by this chapter or by any other law in connection with a

90 notarial act.

91 ~~[(15)]~~ (16) (a) "Official seal" means the seal described in Section 46-1-16 that a notary
92 may attach to a notarial certificate to complete a notarization.

93 (b) "Official seal" includes an electronic seal.

94 ~~[(16)]~~ (17) "Personally known" means familiarity with an individual resulting from
95 interactions with that individual over a period of time sufficient to eliminate every reasonable
96 doubt that the individual has the identity claimed.

97 ~~[(17)]~~ (18) "Remote notarization" means a notarial act performed by a remote notary in
98 accordance with this chapter for an individual who is not in the physical presence of the remote
99 notary at the time the remote notary performs the notarial act.

100 ~~[(18)]~~ (19) "Remote notary" means a notary that holds an active remote notary
101 certification under Section 46-1-3.5.

102 ~~[(19)]~~ (20) (a) "Satisfactory evidence of identity" means:

103 (i) for both an in-person and remote notarization, identification of an individual based
104 on:

105 (A) subject to Subsection ~~[(19)(b)]~~ (20)(b), valid personal identification with the
106 individual's photograph, signature, and physical description that the United States government,
107 any state within the United States, or a foreign government issues;

108 (B) subject to Subsection ~~[(19)(b)]~~ (20)(b), a valid passport that any nation issues; or

109 (C) the oath or affirmation of a credible person who is personally known to the notary
110 and who personally knows the individual; and

111 (ii) for a remote notarization only, a third party's affirmation of an individual's identity
112 in accordance with rules made under Section 46-1-3.7 by means of:

113 (A) dynamic knowledge-based authentication, which may include requiring the
114 individual to answer questions about the individual's personal information obtained from
115 public or proprietary data sources; or

116 (B) analysis of the individual's biometric data, which may include facial recognition,
117 voiceprint analysis, or fingerprint analysis.

118 (b) "Satisfactory evidence of identity," for a remote notarization, requires the
119 identification described in Subsection ~~[(19)(a)(i)(A)]~~ (20)(a)(i)(A) or passport described in
120 Subsection ~~[(19)(a)(i)(B)]~~ (20)(a)(i)(B) to be verified through public or proprietary data sources

121 in accordance with rules made under Section [46-1-3.7](#).

122 (c) "Satisfactory evidence of identity" does not include:

123 (i) a driving privilege card under Subsection [53-3-207\(12\)](#); or

124 (ii) another document that is not considered valid for identification.

125 ~~[(20)]~~ (21) "Signature witnessing" means a notarial act in which an individual:

126 (a) appears in the presence of the notary and presents a document;

127 (b) provides the notary satisfactory evidence of the individual's identity, or is
128 personally known to the notary; and

129 (c) signs the document in the presence of the notary.

130 Section 2. Section [46-1-3.6](#) is amended to read:

131 **[46-1-3.6. Remote notarization procedures.](#)**

132 (1) A remote notary who receives a remote notary certification under Section [46-1-3.5](#)
133 may perform a remote notarization if the remote notary is physically located in this state.

134 (2) A remote notary that performs a remote notarization for an individual that is not
135 personally known to the remote notary shall, at the time the remote notary performs the remote
136 notarization, establish satisfactory evidence of identity for the individual by:

137 (a) communicating with the individual using an electronic device or process that:

138 (i) allows the individual and remote notary to communicate with one another
139 simultaneously by sight and sound; and

140 (ii) complies with rules made under Section [46-1-3.7](#); and

141 (b) requiring the individual to transmit to the remote notary an image of a form of
142 identification described in Subsection ~~[[46-1-2\(19\)\(a\)\(i\)\(A\)](#)]~~ [46-1-2\(20\)\(a\)\(i\)\(A\)](#) or passport
143 described in Subsection ~~[[46-1-2\(19\)\(a\)\(i\)\(B\)](#)]~~ [46-1-2\(20\)\(a\)\(i\)\(B\)](#) that is of sufficient quality for
144 the remote notary to establish satisfactory evidence of identity.

145 (3) (a) A remote notary shall create an audio and video recording of the performance of
146 each remote notarization and store the recording in accordance with Sections [46-1-14](#) and
147 [46-1-15](#).

148 (b) A remote notary shall take reasonable steps, consistent with industry standards, to
149 ensure that any non-public data transmitted or stored in connection with a remote notarization
150 performed by the remote notary is secure from unauthorized interception or disclosure.

151 (4) Notwithstanding any other provision of law, a remote notarization lawfully

152 performed under this chapter satisfies any provision of state law that requires an individual to
153 personally appear before, or be in the presence of, a notary at the time the notary performs a
154 notarial act.

155 Section 3. Section 46-1-3.7 is amended to read:

156 **46-1-3.7. Rulemaking authority for electronic notarization.**

157 (1) The director of elections in the Office of the Lieutenant Governor may make rules
158 in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, regarding
159 standards for and types of:

- 160 (a) electronic software and hardware that [~~a remote notary may use to~~]:
- 161 (i) a notary may use to perform [~~a remote~~] an electronic notarization; and
- 162 (ii) a remote notary may use to keep an electronic journal under Section 46-1-13;
- 163 (b) public and proprietary data sources that a remote notary may use to establish
164 satisfactory evidence of identity under Subsection [~~46-1-2(19)(b)~~] 46-1-2(20)(b);
- 165 (c) dynamic knowledge-based authentication or biometric data analysis that a remote
166 notary may use to establish satisfactory evidence of identity under Subsection[
167 ~~46-1-2(19)(a)(ii)~~] 46-1-2(20)(a)(ii); and
- 168 (d) electronic seals a [~~remote~~] notary may use to complete an electronic notarial
169 certificate.

170 (2) When making a rule under this section, the director of elections in the Office of the
171 Lieutenant Governor shall review and consider standards recommended by one or more
172 national organizations that address the governance or operation of notaries.

173 Section 4. Section 46-1-14 is amended to read:

174 **46-1-14. Entries in journal -- Required information.**

175 (1) A notary may, for each notarial act the notary performs, and a remote notary shall,
176 for each notarial act the remote notary performs remotely, record the following information in
177 the journal described in Section 46-1-13 at the time of notarization:

- 178 (a) the date and time of day of the notarial act;
- 179 (b) the type of notarial act;
- 180 (c) the type title, or a description of the document, electronic record, or proceeding that
181 is the subject of the notarial act;
- 182 (d) the signature and printed name and address of each individual for whom a notarial

183 act is performed;

184 (e) the evidence of identity of each individual for whom a notarial act is performed, in
185 the form of:

186 (i) a statement that the person is personally known to the notary;

187 (ii) a description of the identification document and the identification document's
188 issuing agency, serial or identification number, and date of issuance or expiration;

189 (iii) the signature and printed name and address of a credible witness swearing or
190 affirming to the person's identity; or

191 (iv) if used for a remote notarization, a description of the dynamic knowledge-based
192 authentication or biometric data analysis that was used to provide satisfactory evidence of
193 identity under Subsection ~~[46-1-2(19)(a)(ii)]~~ 46-1-2(20)(a)(ii); and

194 (f) the fee, if any, the notary charged for the notarial act.

195 (2) A notary may record in the journal a description of the circumstances under which
196 the notary refused to perform or complete a notarial act.

197 (3) (a) A remote notary shall include with the journal a copy of the electronic recording
198 of the remote notarization.

199 (b) The electronic recording is not a public record and is not a part of the notary's
200 journal.

201 (4) A remote notary shall maintain, or ensure that a person that the notary designates as
202 a custodian under Subsection 46-1-15(2)(b)(i) maintains, for a period of five years, the
203 information described in Subsections (1) and (3) for each remote notarization the notary
204 performs.

205 Section 5. Section **46-1-17** is amended to read:

206 **46-1-17. Obtaining official seal.**

207 (1) A person may not provide an official seal to an individual claiming to be a notary,
208 unless the individual presents a copy of the individual's notarial commission, attached to a
209 notarized declaration substantially as follows:

210 Application for Notary's Official Seal

211 I, _____ (name of individual requesting seal), declare that I am a notary
212 public duly commissioned by the state of Utah with a commission starting date of _____,
213 a commission expiration date of _____, and a commission number of _____

214 _____ . As evidence, I attach to this statement a copy of my commission.

215 (2) (a) Except as provided in Subsection (2)(b), an individual may not create, obtain, or
216 possess an electronic seal unless:

217 (i) the individual is a [~~remote~~] notary[~~[-]~~]; and

218 (ii) the electronic seal complies with the standards established by rule under Subsection
219 46-1-3.7(1)(d).

220 (b) A person is not guilty of a violation of Subsection (2)(a) if the person is a business
221 that creates, obtains, or possesses an electronic seal for the sole purpose of providing the
222 electronic seal to a certified [~~remote~~] notary.

223 (3) A person who provides, creates, obtains, or possesses an official seal in violation of
224 this section is guilty of a class B misdemeanor.

225 Section 6. **Effective date.**

226 This bill takes effect on May 1, 2024.